IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3040 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARNIVADA SEVA SAHAKARI MANDALILTD & 1 - Petitioner(s)
Versus
DEPUTY COLLECTOR, BANASKANTHA & 2 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 2.MRS RANJAN B PATEL for Petitioner(s) : 1 - 2.
MR HD DAVE AGP for Respondent(s) : 1-2,
MR HARIN P RAVAL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 13/03/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Leave to amend.

2. In this petition under Article 226 of the Constitution, petitioner No.1-society and its Chairman have challenged the order dated 10.2.2006 (Annexure-A) which is a communication from respondent No.3-Banaskantha District Central Cooperative Bank Ltd. (hereinafter referred to as “the bank” or the respondent-bank”) rejecting the petitioner's representation to apply the provisions of Chapter XB of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as “the Act”), particularly the provisions of Section 115-D thereof, while preparing the provisional voters' list for elections to the Managing Committee of respondent No.3-bank.

3. Section 115-D of the Act in Chapter XB of the Act containing provisions relating to urban cooperative banks, reads as under:-

> “**115-D. Right to vote.** - No person shall exercise the right to vote at an election of a member of a committee in a financial year unless he is a member of the bank for the whole of the financial year preceding the financial year in which the election is held and continues to be such member.

The elections to the Managing Committee of the bank are due in the year 2005-06 and, therefore, as per the aforesaid provisions, if applicable to the bank, while preparing the voters' list only those

persons names would be included who were members of the bank on 31.3.2004 and continue to be so till the date of election.

However, the bank contends that it is a District Central Cooperative Bank and not an Urban Cooperative Bank and, therefore, elections to the Managing Committee of the bank are required to be conducted in accordance with the other statutory provisions under which the voters' list is required to be prepared by including those members who were members of the bank as on 31.3.2005 and continue to be so. It is, therefore, necessary to refer to the relevant statutory provisions which have a bearing on the controversy involved in this matter.

4. Section 2 of the Act contains the following definitions:-

> (3) “**Central Bank**” means a co-operative bank, the objects of which include the creation of funds to be loaned to other societies;
>
> (7) “**co-operative bank**” means a society registered under this Act and doing the business of banking, as defined in clause (b) of sub-section (1) of section 5 of the Banking Regulation Act, 1949;
>
> (19) “society” means a co-operative society registered, or deemed to be registered, under this Act;

Section 74C contains the following provisions for conducting elections to committees of certain societies :-

> **"74C. Provision for conduct of elections of committees and officers of certain societies and term of office of members of committees.** - (1) The election of members of the committees and of the officers by the committee, of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter :-
>
> (i) Apex societies mentioned in the Schedule and such other apex societies as the State Government may, by general or special order, published in the Official Gazette, from time to time specify in this behalf, having regard to financial position and share capital of such societies;
>
> (ii) all District Central Co-operative Banks;
>
> (iii) all Primary Land Development Banks;
>
> ... ...
>
> (vii) any other society or class of societies, which the State Government may, by general or special order published in the Official Gazette, from time to time specify in this behalf, regard being had to the financial position and share capital of such institutions."

Section 74C and Chapter XI-A were inserted by Gujarat Act No.6 of 1981. As per the provisions of Section 145B and other provisions in Chapter XIA the power to conduct elections to the managing committees

of the specified societies i.e. societies specified in Section 74C is vested in the Collector of the district where the registered office of the specified cooperative society is situate.

Section 145-Y contains the following provisions empowering the State Government to make rules for regulating all matters relating to the various stages of elections including preparation of list of voters. Section 145-Y reads as under:-

> **145-Y. Powers to make rules for purposes of this Chapter.** - Without prejudice to any other power to make rules contained elsewhere in this Act, the State Government may make rules consistent with this Act generally to provide for and to regulate all or any of the other matters relating to the various stages of the elections (**including preparation of the list of voters**).

In exercise of the aforesaid powers, the State Government framed the Gujarat Specified Cooperative Societies Elections to Committees Rules, 1982. Rule 4(1) of the said Rules contains the following provisions for preparation of voters' list:-

> "**4. Provisional list of voters**.- (1) A provisional list of voters shall be prepared in Gujarati by every society for the year in which general election is due to be held. Persons who are members as on the date of drawing up the accounts of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the

names of voters shall be arranged constituency wise as laid down in the bye-laws."

(emphasis supplied)

The other sub-rules of Rule 4 and Rules 5 and 6 lay down the procedure to be followed for publication of the provisional list of voters, objections to be lodged against such list and the power of the Collector to decide such claims and objections and accordingly to finalize the voters' list which shall be called the final list of voters. The other rules provide for the subsequent stages of election.

Rule 2(c) defines the date of drawing up the accounts as the date of drawing up accounts of the Society concerned under rule 36 of the Gujarat C-operative Societies Rules, 1965.

Rule 36 of the Gujarat Cooperative Societies Rules, 1965 provides that the date of drawing of the accounts of the cooperative society shall be 31st day of March every year.

Upon a conjoint reading of the aforesaid statutory provisions and particularly Rule 4 of the Gujarat Specified Cooperative Societies Elections to Committees Rules, 1982 it would clearly appear that a person who was a member of the specified cooperative society as on 31.3.2005 and continues as a member would be eligible for being included in the list of

voters for elections which are due in the year 2005-06.

5. Mr BS Patel, learned counsel for the petitioners has, however, vehemently submitted that since Section 115-B defines an urban cooperative bank as a society registered under the Cooperative Societies Act and doing the business of banking, as defined in clause (b) of Section 5 of Banking Regulation Act, 1949 and since the respondent-bank is covered by the said definition, the provisions of Chapter XB are applicable to the respondent -bank and, therefore, the provisions of Section 115-D are also applicable to the respondent -bank.

6. On the other hand, Mr Harin Raval, learned counsel for respondent No.3-bank has submitted that the provisions of Chapter XB are only applicable to urban cooperative banks and are not applicable to other cooperative banks, particularly the District Central Cooperative Banks which constitute a separate class by themselves as is clear from Section 74C of the Act and also in the definition clause i.e. Section 2(3) which defines a central bank. It is also submitted that it is also necessary to consider the relevant provisions of the Banking Regulation Act, 1949 and the National Bank for Agricultural & Rural Development Act, 1981. It is submitted that a conjoint reading of the provisions of the aforesaid

three Acts clearly indicates that urban banks are cooperative banks in urban areas which cannot enroll as their members other cooperative societies whereas the district central cooperative bank is a central bank or a federal society of which other cooperative societies in the district are members and, therefore, they constitute two separate and distinct classes.

7. In view of the above submissions, the Court has considered all the relevant provisions of the three Acts.

Section 5 of the Banking Regulation Act, 1949 (hereinafter referred to as “the Banking Act”) defines “banking” and “banking company” as under:-

> “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;
>
> “banking company” means any company which transacts the business of banking in India;

It is pertinent to note that the Banking Act includes Part V which is applicable only to cooperative banks. Section 56 in the said Part V, reads as under:-

> **56. Act to apply to cooperative societies subject to modifications**. - The provisions of

this Act, as in force for the time being, shall apply to, or in relation to, cooperative societies as they apply to, or in relation to, banking companies subject to the following modifications, namely: -

... .

(cci) "cooperative bank" means a State cooperative bank, a Central cooperative bank and a primary cooperative bank;

(ccii) "co-operative credit society" means a cooperative society, the primary object of which is to provide financial accommodation to its members and includes a cooperative land mortgage bank;

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society, -

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and

(3) **the bye-laws of which do not permit admission of any other co-operative society as a member ;**

(ccvii) "central co-operative bank", "co-operative society", "primary rural credit society" and "State co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981;"

(emphasis supplied)

In view of the aforesaid provisions of the Banking Act, it is now necessary to consider the provisions of the National Bank for Agriculture and Rural Development Act, 1981 (hereinafter referred to as “the NABARD Act”) and the relevant provisions are as under:-

2. Definitions. -

(d) “Central co-operative bank” means the principal co-operative society in a district in a State, the primary object of which is financing of other co-operative societies in that district;

(f) “co-operative society” means a society registered or deemed to be registered, under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force in any State ;

(n) “primary rural credit society” means a cooperative society, by whatever name called, -

(1) which has as its object or business the provision of financial accommodation to its members for agriculture or agricultural operations or for the marketing of crops, or for rural development; and

(2) the bye-laws of which do not permit admission of any other co-operative society as member;

(u) “State co-operative bank” means the principal co-operative society in a State, the primary object of which is the financing of other co-operative societies in the State ;

To recapitulate, Section 2(3) of the Gujarat Cooperative Societies Act, 1961 defines “central bank” as a cooperative bank, the objects of which include the creation of funds to be loaned to other societies.

On the other hand, a primary cooperative bank is a cooperative society doing the business of banking, but which is not allowed to enroll any cooperative society as its member (Section 56 (ccv) of Banking Regulation Act). It is, therefore, clear that apart from the fact that by the very nature of its constitution, functions, location and statutory provisions, an urban cooperative bank cannot enroll as its member a cooperative society and stands on a different footing from a district central cooperative bank which has funds to be loaned to other cooperative societies and more particularly for giving credit to societies for agricultural and allied activities. On the other hand, as the name itself would imply an urban cooperative bank would cater to the banking business in an urban area.

8. Mr Raval for the respondent-bank has also pointed out that because the district central cooperative banks are not considered as cooperative banks, the provisions of Section 115-G regarding establishment of the Urban Bank Credit Equalization

Fund and contribution by an urban cooperative banks to the said fund are not applicable to or applied to the respondent-bank.

9. Having regard to the scheme of the Gujarat Cooperative Societies Act, Banking Regulation Act and the NABARD Act and also considering the fact that the Gujarat Act provides for separate chapters - Chapter XA for insured cooperative banks, Chapter XB contains certain other provisions relating to urban cooperative banks, Chapter XI contains provisions for land development banks and Chapter XIA contains provisions for elections of committees and officers of certain societies specified in Section 74C which include District central cooperative banks, it is clear that the Legislature intended that the elections to the committees of the societies specified in Section 74C are to be governed by the provisions contained in Chapter XIA of the Act and the rules framed thereunder and that the Legislature did not intend to apply the provisions of newly inserted Chapter XB to the District Central Cooperative Banks. It is true that Section 115-J contained in Chapter XB provides that the provisions of this Chapter shall have effect notwithstanding anything to the contrary contained in the other provisions of the Act or the rules made thereunder or the byelaws of the bank. However the overriding effect given to the provisions of the Chapter is in

relation to urban cooperative banks and not other banks nor other cooperative societies.

10. Mr Patel for the petitioners has submitted that the objects and reasons for insertion of Chapter XB indicate that the said chapter was added to the Act in view of the serious irregularities which had taken place in the working of certain cooperative banks in the State and that there were irregularities in the working of the Panchmahals District Central Cooperative Bank Ltd.. The objects and reasons relied upon read as under:-

> "**Objects and reasons**: During the years 2001-2002, serious irregularities had taken place in the working of certain urban co-operative banks in the State of Gujarat so as to threaten their very existence. With a view to preventing such serious irregularities taking place in the working of banks in future, it was considered necessary to make, certain other provisions relating to urban co-operative banks in the Gujarat Co-operative Societies Act, 1961."

11. Even if what is urged is correct, merely because irregularities were also committed in the management of a district cooperative bank, it does not necessarily mean that the Legislature intended to apply Chapter XB to all cooperative banks in the State of Gujarat. If that was the intention, the Legislature would have simply made the provisions in Chapter XB applicable to "cooperative banks" without

specifically indicating that the provisions were relating to “urban cooperative banks”.

12. The principle laid down by the Apex Court in **State of Gujarat vs. Dilipbhai Nathjibhai Patel, AIR 1998 SC 1429** that the Court cannot add words to a statute or read words into it which are not there, is a principle which goes against the petitioners' argument because what the petitioners want the Court to do is to delete the word “urban” from the title to the Chapter and the definition of “Bank” as contained in Section 115-B(a).

13. As regards the definition of “Urban Cooperative Bank” contained in clause (f) of Section 115-B, the same cannot be read in isolation. It has to be read in the context of the statutory provisions contained in the Banking Regulation Act, 1949 and also the provisions of the NABARD Act as indicated hereinabove. Read in the said context, it is clear that the District Central Cooperative Bank having as its members, primary cooperative societies and giving credit to such primary cooperative societies is envisaged for agricultural and allied activities in the district, such a bank cannot be considered as an urban cooperative bank which cannot enroll as its member a cooperative society. An urban cooperative bank would by necessary implication be excluded from carrying on the business of giving credit to

agricultural cooperative societies in the district and would, therefore, have its field of business in urban areas.

14. Of course, if the Legislature is of the view that the provisions contained in Chapter XB of the Act should be made applicable to all cooperative banks in the State, there is nothing to prevent the Legislature from doing so, but the provisions contained in Chapter XB as they stand today and read in juxtaposition with the provisions of Section 74C and Chapter XIA of the Gujarat Cooperative Societies Act and Part V of the Banking Regulation Act read with the provisions of the NABARD Act do not support the petitioners' contention that the District Central Cooperative Bank is also covered by the provisions of Chapter XB of the Act, which makes provisions only relating to urban cooperative banks.

15. In view of the above discussion, the petition is dismissed. Notice is discharged.

(M.S. SHAH, J.)

(SHARAD D DAVE, J.)

zgs/-